

**NOT FOR PUBLICATION**

**SEP 23 2004**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ALBERTO TOPETE-URREA,

Defendant - Appellant.

No. 04-50039

D.C. No. CR-03-01791-NAJ

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Napoleon A. Jones, District Judge, Presiding

Submitted September 17, 2004\*\*  
Pasadena, California

Before: T.G. NELSON, SILVERMAN, and WARDLAW, Circuit Judges.

Jose Alberto Topete-Urrea appeals the district court's denial of his motion to suppress marijuana seized during a border search of his truck. We have

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm on one of the grounds cited by the district court.

*United States v. Mayes* squarely controls.<sup>1</sup> Assuming for the sake of this disposition that Topete-Urrea's detention was an illegal arrest and that all factual disputes should be resolved in his favor, the arrest in no way tainted the search.<sup>2</sup> Topete-Urrea alleged nothing that even suggests that his arrest contributed to the finding of the marijuana in his truck and we find nothing in the record suggesting that it did. The district court found that the "block blitz" in force when Topete-Urrea approached the border mandated inspection of every vehicle and that, regardless of the arrest, the inspection would have occurred.<sup>3</sup> Accordingly, we affirm.

AFFIRMED.

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<sup>1</sup> 524 F.2d 803 (9th Cir. 1975); *see also United States v. Nava*, 363 F.3d 142, 146 n.2 (9th Cir. 2004).

<sup>2</sup> *Mayes*, 524 F.2d at 806.

<sup>3</sup> Due to this explicit finding by the district court, we need not remand. *See Murray v. United States*, 487 U.S. 533, 543 (1988) (remanding for factual determination where district court had not explicitly held that the search that revealed incriminating evidence was truly independent of earlier illegality).